

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1044 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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JAYKANT GATULAL & CO.

Versus

JAYANTILAL CHUNILAL PATEL

Appearance:

MR BP MUNSHI for Petitioners.

MR AR MAJMUDAR for Respondent No. 1

SERVED BY AFFIX.-(R) for Respondent No. 2-3

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 09/09/2002

ORAL JUDGEMENT

The present Civil Revision Application is filed against the order dated 14.9.2000 passed by the 2nd Additional Judge, Small Cause Court, Vadodara below Exh. 76 in Rent Suit No. 56/75. In that order the ld. trial Judge has allowed the applicant namely Hasmukh Ramjidas

Shah to be joined as plaintiff No.4 in the Rent Suit No. 56/75.

2. That the facts leading to the present proceedings as narrated in the memo of Civil Revision Application are that the respondents/plaintiffs instituted the suit registered as Suit No. 56/75 for recovery of possession of properties bearing Plot Nos. 2 and 7 with bungalow situated at Race Course, Sayajiganj, Vadodara and mense profits at the rate of Rs. 750/- per month and other reliefs.

3. That the plaintiffs/respondents alleged, inter alia, that they have already filed a Regular Civil Suit No. 1470/67 and as per Lease Deed some part of building known as "Jamdarkhana" falls within demarcated area for road widening and so the part of property of "Jamdarkhana" was required to be demolished; that members of Sampatrao Colony Plot Holders Association were insisting for removal of the structure but the defendants were not paying any attention despite notice dated 4.8.1969 and hence the said suit was filed.

4. That the defendants/petitioners resisted the suit by filing written statement contending, inter alia, that the suit was not maintainable under law; that contents of the plaint were not true and not admitted, that the defendants have not committed breach of any condition of lease; that the plaintiffs have not produced any notice or document to establish that part of the property was required to be demolished by Municipal Corporation or that there was any demand from Sampatrao Plot Holders Association as alleged; that the suit was instituted with mala fide intention to circumvent the provisions of Bombay Rent Act as there were no grounds for eviction against the defendants.

5. That pending the said suit, on 21.8.1998 at Exh. 76, a third party named Hasmukh Ramjidas Shah submitted an application to be impleaded as plaintiff No.4 in the Suit. It was, inter alia, stated in the said application that the plaintiffs in the suit had entered into an agreement to sale with the applicant and others, which, inter alia, provided that the applicant would purchase the property exclusively from the plaintiffs and the said property would include demised premises as well as licensed premises. It was further stated that for the total consideration of payment of Rs. 75 lakhs, payable by the applicant in terms of Agreement to Sale, the

applicant acquired absolute right to purchase the property and in this view of the matter, the applicant was required to be joined as party-plaintiff.

6. The said application was opposed by the defendants who filed a reply vide Exh. 83 to the said suit. Several contentions were raised by the defendants opposing the request of the applicant to be joined as party-plaintiff in the said suit. It has been stated in the said reply that the defendants are not occupiers of the plots No. 2 and 7 but only occupiers of plot No.7 and they have handed over the possession of plot No.2 to the plaintiffs due to litigations which reached upto the Supreme Court. It was further contended that they have paid rent till January 2000 to Toshak Manubhai Patel who is one of the landlords of the suit properties. It was further submitted that the alleged agreement to sell on the basis of which the application for joining party was filed has not been produced at all and hence the court should not allow the applicant to be joined as party-plaintiff in the said suit.

7. After considering the pleadings of the parties and arguments canvassed by the ld. advocates of the respective parties, the learned Judge came to the conclusion that the applicant has purchased plots No. 2 and 7 from the present-plaintiffs and therefore the said application for being joined in the suit as a plaintiff was filed. It is further observed by the learned Judge that by granting the application below Exh. 76 no prejudice would be caused to the otherside, i.e., defendants because by allowing the said application, the true facts would come on record and it would help the court for deciding the dispute which was going on between the parties.

8. It is this order which is under challenge in the present Civil Revision Application before this Court. Mr. B.P. Munshi, ld. advocate appearing for the applicant-revisionist strongly contended that the ld. trial Judge has exceeded his jurisdiction while allowing the said application and because of impleading the applicant as a party-plaintiff grave illegality and injustice is caused to the present applicant-revisionist. He has further submitted that originally a suit being HRP Suit No. 1336/69 was filed on 15.11.1969. Thereafter the same was renumbered as Rent Suit No. 56/75. In that suit the application for joining as a party was moved by the present respondent on 21.8.98. Arguments were over on 3.7.2000 and the impugned order was passed on 14.9.2000. The main challenge against the impugned order

was that the agreement to sell was never produced before the trial court and yet the impugned order is passed. He has further submitted that no notice of attornment was ever given by the present respondent. Even the original-plaintiffs were also not heard in the above matter. It is further submitted that there would not be two exclusive owners of the same property and without any evidence the declaratory status cannot be granted by the court. He has, therefore, submitted that the impugned order passed by the ld. trial Judge is ex-facie illegal, without jurisdiction, and contrary to the provisions of law. In support of his submissions, he has relied on the decision of the Hon'ble Supreme Court in the case of Patel Natvarlal Rupji v. Shri Kondh Group Kheti Vishayak Mandli & Anr. 1996(2) GLR Page 189, wherein it is held that agreement of sale does not create any title except when covered under Sec. 54 of the Act and registered under Sec. 17 of the Registration Act. Equally, it does not create an interest in the property. It merely gives a right to enforce it specifically as an equitable relief in a Court of law. The Hon'ble Supreme Court has further relied on its earlier decision in the case of Technicians Studio Pvt.Ltd. v. Lila Ghosh & Ors. [1978 (1) SCR 516 at 520], wherein it is held that it is well settled that Sec. 53-A confers no active title on the transferee in possession; it only imposes a statutory bar on the transferor. On the basis of these authorities, Mr. Munshi has contended that the present respondent has no right, title or interest in the said property, and on the basis of the alleged document to sell which was never produced before the court the present respondent cannot be impleaded as a party in the pending suit before the lower court.

9. I have heard Mr. B.P. Munshi, ld. advocate appearing for the applicant-revisionist and Mr. A.R. Majmudar, ld. advocate appearing for the respondents. I have gone through the order passed by the ld. trial Judge and also considered the authorities cited by the ld. advocate for the applicant-revisionist. It is to be noted here that what is under challenge in the present C.R.A. is the order passed by the ld. trial Judge allowing the present respondent to be joined as party-plaintiff in the pending suit and the court has only decided that issue by allowing him to be joined as a party-plaintiff. In the opinion of the court even if the applicant is joined as a party-plaintiff, no prejudice would be caused to the other side and by joining him as a party plaintiff the issue involved in the suit can properly be adjudicated upon and on this reasoning the court has granted the application Exh. 6. Such an order

in my respectful opinion would not be considered as an order without jurisdiction or in excess of jurisdiction or it cannot be said that any grave error is committed by the ld. Judge while passing the impugned order. While joining any person as a party no declaration of any right, title or interest of that party in the disputed property is made and as such it would not cause any prejudice nor any grave injustice is committed as contended by Mr. Munshi.

10. Even otherwise the impugned order is an interlocutory order and even if the said order would have been passed in favour of the present petitioner, the suit would not have been disposed of. I am, therefore, of the view that considering the amendment made in Section 115 of the Civil Procedure code, the present Revision is not maintainable. What is to be seen is as to whether if the impugned order would have been passed in favour of the person applying for revision under Sec. 115 or if the order is passed by this Court allowing the Civil Revision Application whether the suit is finally disposed of. There is no dispute about the fact that even if the present order is passed in favour of the applicant-revisionist, the suit would not be finally disposed of. The issues involved in the suit are still to be decided.

11. In this view of the matter, I am of the opinion that there is no merit in the present Civil Revision Application which would call for any interference by this Court and the present C.R.A. deserves to be rejected. Hence it is rejected. Rule discharged with no order as to costs.

12. Since the Rent Suit is of the year 1975 and though more than 25 years have passed it is still pending. The trial Court is therefore directed to dispose of the suit as expeditiously as possible preferably within the period of six months from the date of receipt of the writ of this Court or from the date of receipt of certified copy of this order whichever is earlier.

13. Mr. Munshi, ld. advocate has made a oral request to grant stay against this order for a period of six weeks so as to enable his client to approach the Hon'ble Supreme Court if so advised and the interim relief granted earlier by this Court be continued till 15th October 2002. Looking to the facts and circumstances of the case, interim relief granted earlier is extended upto 15th October, 2002.

rmr. [K.A. Puj, J.]